State Office of Administrative Hearings

Cathleen Parsley
Chief Administrative Law Judge

September 24, 2009

Les Trobman, General Counsel
Texas Commission on Environmental Quality
P.O. Box 13087
Austin Texas 78711-3087

Re: SOAH Docket No. 582-09-2554; TCEQ Docket No. 2008-0952-MSW-E; Executive Director of the Texas Commission on Environmental Quality v. Arthur D. Gonzales

Dear Mr. Trobman:

The above-referenced matter will be considered by the Texas Commission on Environmental Quality on a date and time to be determined by the Chief Clerk's Office in Room 201S of Building E, 12118 N. Interstate 35, Austin, Texas.

Enclosed are copies of the Proposal for Decision and Order that have been recommended to the Commission for approval. Any party may file exceptions or briefs by filing the documents with the Chief Clerk of the Texas Commission on Environmental Quality no later than October 14, 2009. Any replies to exceptions or briefs must be filed in the same manner no later than October 26, 2009.

This matter has been designated **TCEQ Docket No. 2008-0952-MSW-E; SOAH Docket No. 582-09-2554**. All documents to be filed must clearly reference these assigned docket numbers. All exceptions, briefs and replies along with certification of service to the above parties shall be filed with the Chief Clerk of the TCEQ electronically at http://www10.tceq.state.tx.us/epic/efilings/ or by filing an original and seven copies with the Chief Clerk of the TCEQ. Failure to provide copies may be grounds for withholding consideration of the pleadings.

Sincerely,

Roy G. Scudday
Administrative Law Judge

RGS/ap
Enclosures
cc: Mailing List

STATE OFFICE OF ADMINISTRATIVE HEARINGS

AUSTIN OFFICE
300 West 15th Street Suite 502
Austin, Texas 78701
Phone: (512) 475-4993
Fax: (512) 475-4994

SERVICE LIST

AGENCY: **Environmental Quality, Texas Commission on (TCEQ)**

STYLE/CASE: **ARTHUR D GONZALES**

SOAH DOCKET NUMBER: **582-09-2554**

REFERRING AGENCY CASE: **2008-0952-MSW-E**

STATE OFFICE OF ADMINISTRATIVE HEARINGS	**ADMINISTRATIVE LAW JUDGE**
	ALJ REBECCA SMITH

REPRESENTATIVE / ADDRESS	**PARTIES**
BLAS J. COY, JR. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY OFFICE OF PUBLIC INTEREST COUNSEL P.O. BOX 13087, MC-103 AUSTIN, TX 78711-3087 (512) 239-6363 (PH) (512) 239-6377 (FAX) bcoy@tceq.state.tx.us	TCEQ PUBLIC INTEREST COUNSEL
BARHAM RICHARD STAFF ATTORNEY TCEQ LITIGATION DIVISION P O BOX 13087 AUSTIN, TX 78711 (512) 239-0107 (PH) (512) 239-3434 (FAX)	TCEQ EXECUTIVE DIRECTOR
GONZALO P. RIOS, JR. 228 WEST HARRIS AVENUE SAN ANGELO, TX 76903 (325) 655-6224 (PH) (325) 655-6402 (FAX)	ARTHUR D. GONZALES

xc: Docket Clerk, State Office of Administrative Hearings

SOAH DOCKET NO. 582-09-2554
TCEQ DOCKET NO. 2008-0952-MSW-E

EXECUTIVE DIRECTOR OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY,	§	**BEFORE THE STATE OFFICE**
Petitioner	§	
v.	§	**OF**
ARTHUR D. GONZALES,	§	
Respondent	§	**ADMINISTRATIVE HEARINGS**

PROPOSAL FOR DECISION

I. INTRODUCTION

The Executive Director (ED) of the Texas Commission on Environmental Quality (TCEQ or Commission) seeks to assess $2,750.00 in administrative penalties against Arthur D. Gonzales (Respondent) and to require corrective action for a violation of TEX. HEALTH & SAFETY CODE (H&S Code) § 361.112(a) and 30 TEX. ADMIN. CODE (TAC) § 328.60(a). Simply stated, the ED alleges that Respondent failed to obtain a scrap tire storage site registration for a facility prior to storing more than 500 used or scrap tires on his property.

The Administrative Law Judge (ALJ) concluded that the ED established that Respondent violated the statute and the rule. However, the ALJ finds that the proposed penalty should be reduced. The Commission should find that the violation occurred and assess Respondent an administrative penalty of $1,000.00.

II. PROCEDURAL HISTORY AND JURISDICTION

The hearing convened on September 17, 2009, before ALJ Roy G. Scudday in the William P. Clements Building, 300 West 15th Street, Fourth Floor, Austin, Texas. The ED was represented by Barham Richard, Attorney, Litigation Division. Respondent was represented by attorney Gonzalo P. Rios, Jr. The record closed on the date of the hearing.

Jurisdiction was proved as found in the order dated April 30, 2009. Undisputed procedural facts are set out in findings in the Proposed Order.

III. DISCUSSION

A. Violation

Respondent owns property (Site) located 15 miles southwest of Ozona on Pandale Road, Crockett County, Texas. On April 18, 2008, TCEQ Investigator Cain Cline conducted an inspection of the Site and observed that over 600 scrap tires were on the Site. Mr. Cline concluded that Respondent had violated rules and statutes within the Commission's jurisdiction by not obtaining a scrap tire storage site registration for the Site.

On April 28, 2008, the ED issued a Notice of Enforcement to Respondent regarding the violation. On July 2, 2008, the ED issued a proposed settlement to Respondent, which was not accepted. On October 21, 2008, the ED issued the Executive Director's Preliminary Report and Petition (EDPRP) that cited Respondent for the violation.[1] The ED recommended the imposition of an administrative penalty in the amount of $2,750.00 and requiring corrective action.

Under TEX. WATER CODE ANN. (Code) § 7.051, the Commission is authorized to assess an administrative penalty against a person who violates a provision of the Code within the Commission's jurisdiction, or a rule adopted or an order or permit issued thereunder. The penalty may not exceed $10,000.00 per day of violation.[2] Additionally, the Commission may order the violator to take corrective action.[3]

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[1] ED Ex. A.

[2] Code § 7.052(c).

[3] Code § 7.073.

In this case Respondent is alleged to have violated H&S Code § 361.112(a) and 30 TAC § 328.60(a), which are a statute and a rule within the Commission's authority. Thus, the Commission has jurisdiction over Respondent and authority to assess penalties requested by the ED. Further, the State Office of Administrative Hearings (SOAH) has jurisdiction over this matter as reflected in the Conclusions of Law that are in the attached Order.

H&S Code § 361.112(a) provides that a person may not store more than 500 used or scrap tires unless the person registers the storage site with the TCEQ. The rule at 30 TAC § 328.60(a) provides that storage of more than 500 used or scrap tires may not begin until the person storing the tires obtains a scrap tire storage site registration.

Respondent does not dispute that he did not obtain the required scrap tire storage site registration. However, Respondent argues that he has been seeking to resolve the matter since purchasing the property and that he has come into compliance in regard to the violation by removing the tires. In addition, Respondent points to the long enforcement history regarding tires on the Site prior to his purchase of it.

The storage of the tires in question on the Site was first observed by TCEQ investigator Adam Hernandez on November 26, 2002, who found about 5,000 tires in a draw on the Site. At that time the Site was owned by Romulo Lozano, Jr. The investigator determined that the former owner of the property, Pete Maldonado, had transported tires to the Site from Preddy's Tire and Towing, Wool Growers Central Storage Company, and J. B. Tire and Lube Service, all located in Ozona, Texas. A Notice of Enforcement was issued to Pete Maldonado on January 3, 2003.[4]

On August 12, 2004, a follow-up investigation of the Site was conducted by Dina Babinski and Mr. Cline. They determined that approximately 4,000 tires remained on the site.[5]

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[4] ED Ex. 5.

[5] ED Ex. 6.

On April 27, 2005, Default Order No. 2003-0026-MSW-E was issued by the Commission. That Order concluded that Pete Maldonado transported scrap tires to an unauthorized site and failed to obtain a scrap tire transporter registration prior to storing more than 500 tires on the Site. The Order assessed an administrative penalty of $3,600.00 against Mr. Maldonado and ordered him to remove the tires from the Site to a registered facility through a registered transporter.[6]

On March 6, 2006, Mr. Cain conducted a follow-up inspection of the Site and found that compliance with the Order had not been achieved because none of the tires appeared to have been removed.[7] On June 1, 2006, a Notice of Violation was issued to Romulo Lozano requiring him to either remove the tires or obtain a scrap tire storage site registration.[8]

Mr. Lozano subsequently defaulted on the vendor lien on the Site, which reverted to the original seller, Jarrett R. Hamilton. Mr. Hamilton then sold the Site at auction to Respondent on February 8, 2007. The warranty deed stated that the property was sold "AS IS."[9] After purchasing the Site, Respondent discovered the presence of the tires.

On August 20, 2007, Respondent visited with Mr. Cline and proposed a plan regarding the clean-up of the site. Mr. Cline informed Respondent that any plan regarding the removal and/or processing of the tires would need to be authorized by the Scrap Tire Management Registration Coordinator. On September 25, 2007, Mr. Cline conducted another follow-up investigation of the Site and found that none of the tires appeared to have been removed. Mr. Cline sent Respondent's brother a packet of paperwork for the storage site registration on September 26, 2007.[10]

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[6] ED Ex. 22.

[7] ED Ex. 8.

[8] ED Ex. 18.

[9] ED Ex. 17.

[10] ED Ex. 9.

On October 17, 2007, a Notice of Violation (NOV) was issued to Respondent requiring him to arrange for removal of the tires by a registered transporter or comply with the storage site registration requirements.[11] On November 14, 2007, Mr. Cline recommended that enforcement action be pursued against Mr. Lozano, Wool Growers Storage Company, and Charles Preddy.[12] Mr. Cain testified that in all three cases his superiors determined that his recommended action not be pursued and that all future enforcement efforts focus on Respondent.

On November 15, 2007, Respondent's attorney wrote the ED requesting assistance in the removal of the tires.[13] In February 2008, Respondent told Mr. Cline that he had arranged for some individuals to cut-up the tires with reciprocating saws powered by portable generators. Respondent told Mr. Cline that approximately 6,000 to 7,000 pounds of tire pieces, representing about ¼ of the tires on the Site, had been hauled to the City of San Angelo landfill, and that he had spent about $5,000.00. Respondent further stated that he had contacted a contractor in Midland to remove the remainder of the tires. Mr. Cline told Respondent that he was required to have a site registration and that if compliance were not accomplished within 180 days from the NOV, *i.e.*, by April 2008, he would be required to forward the matter to the Enforcement Division.[14]

On April 18, 2008, Mr. Cline talked to Respondent, who stated that he had arranged with the Midland contractor to start removing the tires on that date. Mr. Cline conducted yet another follow-up investigation of the Site on that same date and noted over 600 tires still on site. He also noted a large loader on the site and that some tires appeared to have been removed. The April 28, 2008 Notice of Enforcement was then issued.[15] On September 5, 2008, Respondent's attorney notified the Enforcement Division that Respondent had contracted with B. G. Tire Disposal in Odessa, Texas,

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[11] ED Ex. 19.

[12] ED Ex. 11, 12, and 13.

[13] Resp. Ex. 1.

[14] ED Ex. 14.

[15] Resp. Ex. 1.

and that the tires had been removed as of June 16, 2008.[16] However, the ED did not conduct a follow-up investigation of the Site to confirm that the tires had been removed.

The ALJ concludes that Respondent has admitted that he committed the alleged violation, although he does appear to have been diligently attempting to remove the tires, which he finally accomplished.

B. Penalty

The total administrative penalty sought for the violation is $2,750.00. This amount comprises a base penalty of $2,500.00. As testified to by Ross Fife, Enforcement Coordinator, this amount was based on the Commission's 2002 Penalty Policy.[17] That policy provides that a programmatic violation such as failure to secure a spare tire storage registration is considered to be major because all of the permit requirements were not met by a facility with greater than 500 tires. The appropriate percentage for such a violation is 25%, which was then multiplied by the highest allowed penalty amount, $10,000.00. There was an adjustment upward of $250.00 for compliance history based on two previous NOV's for the same or similar violations in the past five years (a 5% enhancement for the June 1, 2006 NOV issued to Romulo Lozano prior to Respondent's purchase of the Site and a 5% enhancement for the October 17, 2007 NOV issued to Respondent). Mr. Fife further testified that the ED did not propose an adjustment downward for good faith efforts to comply because Respondent did not provide evidence that compliance had been achieved prior to July 2, 2008, when an initial settlement offer was made to Respondent. (Mr. Fife was apparently not aware of the September 5, 2008 letter from Mr. Rios that included invoices showing payment for the tire removal that was completed on June 16, 2008.) The base penalty plus the 10% enhancement

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[16] ED Ex. 15.

[17] ED Ex.23, *Penalty Policy of the Texas Commission on Environmental Quality*, September 2002, RG-253.

equals the $2,750.00 penalty sought by the ED.[18] The issue regarding the corrective action sought by the ED appears to be moot in view of the fact that the tires have been removed.

Respondent disputes the overall accuracy of the ED's calculation of the penalty. He argues that the penalty should not have been enhanced by 5% for an NOV that was issued prior to Respondent's assuming ownership of the Site. Respondent further argues that the overall penalty should have been decreased by 50% because Respondent had demonstrated that he had made an extraordinary good faith effort to comply before the issuance of the initial settlement offer. Respondent asserts that such compliance was completed as soon as possible considering the remoteness of the Site and the failure of the ED to pursue action against the generators of the tires.

In regard to the 10% enhancement, the ED points to the language of 30 TAC § 60.1(d). That rule provides that "if ownership of the site changed during the five-year compliance period, a distinction of compliance history of the site under each owner during that five-year period shall be made. Specifically, for any part of the compliance period that involves a previous owner, the compliance history will include only the site under review." The ED argues that this language requires the five-year compliance history of the Site must be considered despite the fact that there were two different owners. This interpretation appears to fail to recognize a distinction to be made for each owner, although elsewhere in the Penalty Policy it is stated that purchasers inherit the compliance problems of their purchase.

As for the 50% adjustment sought by Respondent, the ED points out that the penalty policy states that good faith efforts will only be considered if compliance is achieved before the issuance of the settlement offer and that Respondent did not provide verification of his compliance until well after July 2008. In addition, the ED argues that Respondent's compliance efforts were not extraordinary under the Penalty Policy because his actions did not go beyond what was expected, either by securing the required registration or removal of the tires. However, this position does not

[18] ED Ex. 24.

take into consideration the fact that, as shown by the B. G. Tire Disposal invoices, Respondent did successfully remove all the tires by June 16, 2008, prior to the issuance of the settlement offer. According to the penalty policy, this compliance should result in a reduction of the base penalty by 10%.

Under Code § 7.053, the ED must consider the following factors in determining the proper penalty:

- the history and extent of previous violations;
- the degree of culpability, including whether the violation was attributable to mechanical or electrical failures and whether the violation could have been reasonably anticipated and avoided;
- the demonstrated good faith, including actions taken by the alleged violator to rectify the cause of the violation and to compensate affected persons;
- economic benefit gained through the violation;
- the amount necessary to deter future violations; and
- any other matters that justice may require.

Neither party addressed the possibility of a downward adjustment "due to matters that justice may require." As stated on page 16 of the Penalty Policy, "Normally, respondents inherit the compliance history of purchased facilities, but there may be circumstances where the resulting penalty does not reflect the efforts of the new provider and staff may recommend a downward adjustment."

In this case, Respondent clearly made efforts to remove the tires as soon as he became aware of the problem. In August 2007 he met with Mr. Cline to discuss a plan for removing the tires. In November 2007 he requested assistance from the ED in having the tires removed. In February 2008 he paid for a portion of the tires to be cut up and hauled to a landfill. In April 2008 he contracted with B. G. Tire Disposal for the removal of the remainder of the tires, which was accomplished by June 16, 2008, and for which Respondent testified that he spent over $14,000.00. Respondent was able to rectify a situation that had been in existence for at least five years before he came into possession of the Site. In the judgment of the ALJ, justice requires that this resolution of a long-

standing problem by Respondent should require a downward adjustment of the base penalty to at least $1,000.00.

Based on the above analysis, the ALJ concludes that a penalty of not more than $1,000.00 is consistent with the factors in Code § 7.053, which must be addressed in assessing an administrative penalty, and with the Commission's 2002 Penalty Policy. The penalty recommended by the ALJ is commensurate with the severity of the violation found to have occurred and the corrective action taken by Respondent to remedy the situation.

SIGNED September 24, 2009.

ROY G. SCUDDAY
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

AN ORDER Assessing Administrative Penalties Against
Arthur D. Gonzales
TCEQ DOCKET NO. 2008-0952-MSW-E
SOAH DOCKET NO. 582-09-2554

On _____, the Texas Commission on Environmental Quality (Commission or TCEQ) considered the Executive Director's Preliminary Report and Petition (EDPRP) recommending that the Commission enter an enforcement order assessing administrative penalties against Arthur D. Gonzales (Respondent). Roy G. Scudday, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH), conducted a public hearing on this matter on September 17, 2009, in Austin, Texas, and presented the Proposal for Decision.

The following are parties to the proceeding: Respondent and the Commission's Executive Director (ED).

After considering the ALJ's Proposal for Decision, the Commission makes the following Findings of Fact and Conclusions of Law.

I. FINDINGS OF FACT

1. On November 26, 2002, TCEQ investigator Adam Hernandez found about 5,000 tires in a draw on a site (Site) located 15 miles southwest of Ozona on Pandale Road, Crockett County, Texas. At that time the Site was owned by Romulo Lozano, Jr.
2. The former owner of the property, Pete Maldonado, had transported tires to the Site from Preddy's Tire and Towing, Wool Growers Central Storage Company, and J. B. Tire and Lube

Service, all located in Ozona, Texas. A Notice of Enforcement was issued to Pete Maldonado on January 3, 2003.

3. On August 12, 2004, a follow-up investigation of the Site was conducted by TCEQ investigators Dina Babinski and Cain Cline. They observed that approximately 4,000 tires remained on the site.

4. On April 27, 2005, Default Order No. 2003-0026-MSW-E was issued by the Commission. That Order concluded that Pete Maldonado transported scrap tires to an unauthorized site and failed to obtain a scrap tire transporter registration prior to storing more than 500 tires on the Site. The Order assessed an administrative penalty of $3,600.00 against Mr. Maldonado and ordered him to remove the tires from the Site to a registered facility through a registered transporter.

5. On March 6, 2006, Mr. Cain conducted a follow-up inspection of the Site and found that compliance with the Default Order had not been achieved because none of the tires appeared to have been removed. On June 1, 2006, a Notice of Violation (NOV) was issued to Romulo Lozano requiring him to either remove the tires or obtain a scrap tire storage site registration.

6. Mr. Lozano subsequently defaulted on the vendor lien on the Site, which reverted to the original seller, Jarrett R. Hamilton. Mr. Hamilton then sold the Site at auction to Respondent on February 8, 2007. The warranty deed stated that the property was sold "AS IS." After purchasing the Site, Respondent discovered the presence of the tires.

7. On August 20, 2007, Respondent visited with Mr. Cline and proposed a plan regarding the clean-up of the site. Mr. Cline informed Respondent that any plan regarding the removal

and/or processing of the tires would need to be authorized by the Scrap Tire Management Registration Coordinator.

8. On September 25, 2007, Mr. Cline conducted another follow-up investigation of the Site and found that none of the tires appeared to have been removed. Mr. Cline sent Respondent's brother a packet of paperwork for the storage registration on September 26, 2007.

9. On October 17, 2007, an NOV was issued to Respondent requiring him to arrange for removal of the tires by a registered transporter or comply with the registration requirements.

10. On November 15, 2007, Respondent's attorney wrote the ED requesting assistance in the removal of the tires.

11. In February 2008, Respondent arranged for some individuals to cut-up the tires with reciprocating saws powered by portable generators. Approximately 6,000 to 7,000 pounds of tire pieces, representing about ¼ of the tires on the Site, were hauled to the City of San Angelo landfill, and Respondent spent about $5,000.00 in their removal.

12. In February 2008, Mr. Cline told Respondent that he was required to have a spare tire storage site registration.

13. On April 18, 2008, Mr. Cline conducted another follow-up investigation of the Site and observed over 600 tires still on the Site. He also observed a large loader on the Site and that some tires appeared to have been removed.

14. On April 28, 2008, a Notice of Enforcement was issued to Respondent.

15. Respondent contracted with B. G. Tire Disposal in Odessa, Texas, and all the tires were removed from the Site as of June 16, 2008.

16. On October 21, 2008, the ED issued the Executive Director's Preliminary Report and Petition (EDPRP) that cited Respondent for the violation of failure to register the site as a spare tire storage site in violation of TEX. HEALTH & SAFETY CODE (H&S Code) § 361.112(a) and 30 TEX. ADMIN. CODE (TAC) § 328.60(a).

17. The ED recommended the imposition of an administrative penalty in the amount of $2,750.00 and sought corrective action.

18. On December 22, 2008, Respondent requested a contested case hearing on the allegations in the EDPRP.

19. On February 3, 2009, the case was referred to SOAH for a hearing.

20. On February 23, 2009, the Commission's Chief Clerk issued notice of the preliminary hearing to all parties, which included the date, time, and place of the hearing, the legal authority under which the hearing was being held, and the violations asserted.

21. The parties waived appearance at the preliminary hearing and the ALJ issued an order on April 30, 2009, which stated that the ED had established jurisdiction to proceed.

22. The hearing on the merits was conducted on September 17, 2009, in Austin, Texas, by ALJ Roy G. Scudday.

23. Respondent was represented at the hearing by attorney Gonzalo P. Rios, Jr. The ED was represented by, Barham Richard, attorney in TCEQ's Litigation Division.

24. The proposed penalty of $2,750.00 comprised a base penalty of $2,500.00 for failure to secure a spare tire storage site registration. There was a 10% upward adjustment of the penalty for compliance history based on two previous NOVs for the same or similar

violations in the past five years (a 5% enhancement for each), one to Respondent and one to Romulo Lozano, Jr., the previous owner.

25. The Commission's 2002 Penalty Policy provides that penalty reductions for good faith efforts to complete corrective actions necessary to return the respondent to complete compliance will only be considered if the respondent has achieved compliance prior to the issuance of a settlement offer, which Respondent accomplished. The ED did not propose an adjustment downward for good faith efforts to comply, despite Respondent's having removed the tires prior to the issuance of an initial settlement offer on July2, 2008.

26. The Commission's 2002 Penalty Policy provides that, in determining the penalty for violations, a downward adjustment may be made due to factors that justice may require. A reduction of the total penalty to $1,000 is an appropriate recognition of efforts taken by Respondent to resolve a long-standing problem that he had not caused but had inherited through his purchase of the property.

27. An administrative penalty of $1 000.00 takes into account culpability, economic benefit, good faith efforts to comply, compliance history, release potential, and other factors set forth in Code § 7.053 and in the Commission's 2002 Penalty Policy.

II. CONCLUSIONS OF LAW

1. Under Code § 7.051, the Commission may assess an administrative penalty against any person who violates a provision of the Code or H&S Code within the Commission's jurisdiction or of any rule, order, or permit adopted or issued thereunder.

2. Under Code § 7.052, a penalty may not exceed $10,000.00 per violation, per day, for the violation at issue in this case.

3. Respondent is subject to the Commission's enforcement authority, pursuant to Code § 7.002.

4. As required by Code § 7.055 and 30 TAC §§ 1.11 and 70.104, Respondent was notified of the EDPRP and of the opportunity to request a hearing on the alleged violations, or the penalties and the corrective actions proposed therein.

5. As required by TEX. GOV'T CODE ANN. §§ 2001. 051(1) and 2001.052; Code § 7.058; 1 TAC § 155.401; and 30 TAC §§ 1.11, 1.12, 39.25, 70.104, and 80.6; Respondent was notified of the hearing on the alleged violation and the proposed penalties.

6. SOAH has jurisdiction over matters related to the hearing in this matter, including the authority to issue a Proposal for Decision with Findings of Fact and Conclusions of Law, pursuant to TEX. GOV'T CODE ANN. ch. 2003.

7. Based on the above Findings of Fact, Respondent violated H&S Code § 361.112(a) and 30 TAC § 328.60(a).

8. In determining the amount of an administrative penalty, Code § 7.053 requires the Commission to consider several factors including:

- Its impact or potential impact on public health and safety, natural resources and their uses, and other persons;
- The nature, circumstances, extent, duration, and gravity of the prohibited act;
- The history and extent of previous violations by the violator;
- The violator's degree of culpability, good faith, and economic benefit gained through the violation;
- The amount necessary to deter future violations; and
- Any other matters that justice may require.

9. The Commission has adopted a Penalty Policy setting forth its policy regarding the computation and assessment of administrative penalties, effective September 1, 2002.

10. Based on consideration of the above Findings of Fact, the factors set out in Code § 7.053, and the Commission's Penalty Policy, a penalty of $1,000.00 should be assessed against Respondent.

NOW, THEREFORE, IT IS ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, IN ACCORDANCE WITH THESE FINDINGS OF FACT AND CONCLUSIONS OF LAW, THAT:

1. Arthur D. Gonzales is assessed an administrative penalty in the amount of $1,000.00 for violation of 30 TEX. HEALTH & SAFETY CODE § 361.112(a) and 30 TEX. ADMIN. CODE § 328.60(a). The payment of this administrative penalty and Arthur D. Gonzales' compliance with all the terms and conditions set forth in this Order will completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. All checks submitted to pay the penalty assessed by this Order shall be made out to "Texas Commission on Environmental Quality." Administrative penalty payments shall be sent with the notation "Re: Arthur D. Gonzales Docket No. 2008-0952-MSW-E" to:

    Financial Administration Division, Revenues Section
    Attention: Cashier's Office, MC 214
    Texas Commission on Environmental Quality
    P.O. Box 13088
    Austin, Texas 78711-3088

2. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas (OAG) for further enforcement proceedings without notice to Respondent if

the Executive Director determines that Respondent has not complied with one or more of the terms or conditions in this Commission Order.

3. All other motions, requests for entry of specific Findings of Fact or Conclusions of Law, and any other requests for general or specific relief, if not expressly granted herein, are hereby denied.

4. The effective date of this Order is the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 80.273 and TEX. GOV'T CODE ANN. § 2001.144.

5. As required by TEX. WATER CODE ANN. § 7.059, the Commission's Chief Clerk shall forward a copy of this Order to Respondent.

6. If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any provision shall not affect the validity of the remaining portions of this Order.

ISSUED:

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Bryan W. Shaw, Ph.D., Chairman
For the Commission